

# **EXHIBIT 2**

Third Declaration of Paul  
Enriquez (August 18, 2023)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

THE GENERAL LAND OFFICE OF THE  
STATE OF TEXAS, *et al.*,

Plaintiffs,  
v.

JOSEPH R. BIDEN JR., in his official  
capacity as President of the United States,  
*et al.*,

Defendants

No. 7:21-cv-00272

THE STATE OF MISSOURI; THE STATE  
OF TEXAS,

Plaintiffs,  
v.

JOSEPH R. BIDEN JR., in his official  
capacity as President of the United States,  
*et al.*,

Defendants.

No. 7:21-cv-00420  
(formerly No. 6:21-cv-00052)  
Hon. Drew B. Tipton

**THIRD DECLARATION OF PAUL ENRIQUEZ**

I, Paul Enriquez, declare as follows:

1. I am the Director, Infrastructure Portfolio, U.S. Border Patrol Program Management Office Directorate (“PMOD”), U.S. Customs and Border Protection (“CBP”), an agency of the Department of Homeland Security (“DHS”). I have held this position since January 2023 and support the planning and execution of border infrastructure projects from construction to

maintenance. From May 2021 to December 2022, I served as the Deputy Director for the Infrastructure Portfolio and from August 2018 to May 2021, I served as the Real Estate and Environmental Director for the Infrastructure Portfolio. From 2013 to August 2018, I was the Real Estate and Environmental Branch Chief for the Border Patrol and Air and Marine Program Management Office (“BPAM”), Facilities Management and Engineering, Office of Facilities and Asset Management. From 2011 to 2013, I was employed as an Environmental Protection Specialist in the BPAM office. In that role, I performed environmental analyses for various border infrastructure projects. From 2008 to 2011, I was a contractor assigned to the BPAM office and provided environmental support on various border infrastructure projects.

2. CBP is the DHS component with primary responsibility for border security. CBP constructs, operates, and maintains border infrastructure necessary to deter and prevent illegal entry on the southern border.

3. Within CBP, PMOD has expertise in managing and executing border infrastructure projects. PMOD is tasked with managing the schedule, finances, real estate acquisition, environmental planning, and construction of the border infrastructure system along the U.S. border.

4. Based upon my current and past job duties, I am familiar with the funding appropriated to CBP for barrier construction and the obligations and projects associated with such funding.

5. I previously submitted declarations on December 8, 2021, and July 12, 2022, that outlined, among other things, how CBP was using the appropriated funds it received in fiscal years (“FY”) 2020 and 2021 for barrier system in a manner that is consistent with their purpose and DHS’s *Border Wall Plan Pursuant to Presidential Proclamation 10142* *Border Wall Plan Pursuant to Presidential Proclamation 10142*, which was released on June 11, 2021, and a subsequent amendment to the Plan, which was released on July 11, 2022.

6. This declaration supplements those earlier declarations.

7. This declaration is based on my personal knowledge and information made available to me in the course of my official duties.

## BACKGROUND

8. As detailed in my prior declarations, on January 20, 2021, President Biden issued Proclamation 10142, *Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction* (the “Proclamation”). The Proclamation ordered, among other things, that the Secretary of Defense and the Secretary of Homeland Security “pause work on each construction project on the southern border wall, to the extent permitted by law” and develop a plan “for the redirection of funds concerning the southern border wall, as appropriate and consistent with applicable law.” The Proclamation also stated that, “After the plan is developed, the Secretary of Defense and the Secretary of Homeland Security shall take all appropriate steps to resume, modify, or terminate projects and to otherwise implement the plan.”

9. DHS released its *Border Wall Plan Pursuant to Presidential Proclamation 10142* (the “Plan”) on June 11, 2021. A copy of the Plan was attached as Exhibit A to my July 2022 declaration. The Plan set forth the guiding principles for barrier construction going forward using funds appropriated to DHS between FY 2017-2021. For funds appropriated between FY 2017-2020, the Plan explains that DHS may use these funds on border infrastructure projects that “are needed to address life, safety, environmental, or other remediation requirements.” Plan at § 3. The Plan further states that CBP would use funding received in FY 2021 to address the existing site conditions at the former Department of Defense (“DoD”) border barrier project sites, including, among other things, completing site drainage features and finishing the construction of patrol, maintenance, and access roads. Plan at § 4.B.

10. As outlined in my July 2022 declaration, in accordance with the Plan, DHS approved multiple projects that are consistent with the purpose of the Congressional appropriations. These projects address life, safety, environmental, and operational requirements in United States Border Patrol (“USBP”) San Diego, El Centro, Yuma, Tucson, El Paso, and Rio Grande Valley (“RGV”) Sectors. The approved projects include, for example:

- a. In the USBP San Diego Sector, within the Friendship Circle area, CBP is

currently replacing primary and secondary barrier with new bollard barrier. CBP is also installing pedestrian and vehicle gates. The existing primary barrier that is being replaced was not properly treated to withstand corrosion when it was installed in 2008-09. The existing secondary barrier was partially removed in preparation for new barrier construction prior to the pause and is now being completely replaced. Both posed a risk to USBP agents, migrants, and the general public if not replaced. CBP expects to complete this project in September 2023. This project is funded by the FY 2018, FY 2020, and FY 2021 barrier system appropriations.

- b. Also in the USBP San Diego Sector, CBP is constructing a structure for crossing over the Tijuana River channel. The current gap in infrastructure creates security vulnerabilities and is a health and safety concern due to the heavily polluted conditions of the river. The structure will allow USBP agents to drive across the river for quicker access to both sides. The structure will be equipped with lift gates. The lift gates will prevent pedestrians from crossing the border through the Tijuana River channel. The gates can be lifted so the structure does not impede the flow of water through the Tijuana River during storm events or when there are discharges from Mexico in accordance with the United States' treaty obligations. CBP collaborated with the United States International Boundary and Water Commission to include solutions for transboundary trash flows that cause environmental degradation of the Tijuana River and estuaries located down river. CBP expects to complete this project in March 2024. This project is funded by the FY 2018 and FY 2020 barrier system appropriations.

FIGURE 1: TIJUANA RIVER CHANNEL BRIDGE, EARLY CONSTRUCTION ACTIVITY, USBP SAN DIEGO SECTOR



- c. CBP also undertook important erosion and drainage control projects in the USBP San Diego Sector, including a project to replace drainage gates at 15 locations across the border. The gates were either missing or in disrepair, creating funnel points for illicit activity, as individuals attempt entry through the below-ground storm channels that terminate at the gates. When water levels are high, these areas can be particularly dangerous for migrants and agents. As part of replacing the drainage gates CBP installed gate motors and LED lighting, which further reduces the risk to agents and migrants. CBP expects to complete this project in August 2023. This project is funded by the FY 2018 and FY 2020 barrier system appropriations.



FIGURE 2: DRAINAGE GATE BEFORE REPAIR, USBP SAN DIEGO SECTOR



FIGURE 3: DRAINAGE GATE AFTER REPAIR, USBP SAN DIEGO SECTOR



- d. As part of this same project, CBP completed important erosion control work. As a result of improper compaction of soil and construction materials adjacent to the border barrier and patrol road, erosion was undermining the integrity of the border barrier and making the patrol road unsafe for travel. Both the barrier and road were at risk of failure, creating dangerous conditions for agents, migrants, and members of the local community. CBP backfilled areas along the barrier with earth and rock and improved sections of a maintenance and patrol road in the USBP San Diego Sector.

FIGURE 4: MAINTENANCE AND PATROL ROAD BEFORE REPAIR AND IMPROVEMENT, USBP SAN DIEGO SECTOR



FIGURE 5: MAINTENANCE AND PATROL ROAD AFTER REPAIR AND IMPROVEMENT, USBP SAN DIEGO SECTOR



- e. In the USBP El Centro Sector, CBP installed 100-feet of retractable gates underneath an existing bridge across the New River. Prior to installation, this area posed significant life and safety concerns. The waters of the New River are extremely polluted and hazardous. Prior to this project there was no infrastructure to prevent individuals or groups from entering the New River, endangering themselves, and forcing agents to attempt dangerous rescues or



interdictions. Smugglers routinely took advantage of this location. This project was funded by the FY 2018 barrier system appropriation.

FIGURE 6: NEW RIVER BARRIER, USBP EL CENTRO SECTOR



- f. In the USBP El Centro and El Paso Sectors, CBP is addressing security vulnerabilities where barrier intersects with railroad tracks. In the El Centro Sector, CBP is installing a 30-ft bollard-style automatic train gate, which will replace a manual chain link gate. This project is situated in a heavily urbanized area, where individuals crossing illegally can disappear into the surrounding population in less than a minute. The existing, substandard gate is routinely exploited by smugglers. CBP expects to complete this project in November 2023. This project is funded by the FY 2018 and FY 2020 barrier system appropriations. In the El Paso Sector, CBP is relocating the existing barrier and installing a new gate closer to the river. This project will allow for continued

railroad access while closing a gap in the existing barrier. The gap was a funnel point for illicit activity, and the daily train operations made it particularly dangerous for migrants and agents. CBP expects to complete this project in December 2023. This project is funded by the FY 2021 barrier system appropriation.

- g. In the USBP Yuma Sector, CBP is currently executing two projects to fill gaps in the existing barrier. As part of the so-called “Yuma Hill” project, CBP is filling an approximately 500-foot gap in the existing barrier with 18-foot bollard-style barrier and installing a maintenance road. If not completed, the gap could be a funnel point for illicit activity that would pose significant risks to migrants or groups who continue north into the adjacent Barry M. Goldwater bombing range. The expected completion date for the Yuma Hill project is September 2023. This project is funded by the FY 2021 barrier system appropriation.

FIGURE 7: YUMA HILL PROJECT, USBP YUMA SECTOR





- h. Similarly, as part of the so-called “Morelos Dam” project in the Yuma Sector, CBP is filling four gaps between approximately 50 and 1300 feet in the existing barrier with a combination of barrier and mechanized vehicle gates to allow for access to the riverside of the barrier. The gaps are a dangerous funnel point for migrants attempting to cross into the United States. In order to access the gaps from Mexico, migrants must cross the Morelos Dam and the Colorado River. Crossing the dam and the river creates a life and safety hazard, as there have been incidents where attempted crossings have resulted in drownings and injuries from falls. Such attempted crossings create safety risks to Border Patrol agents and first responders who are required to enter the water to save migrants who are in distress. CBP expects to complete the Morelos Dam project in August 2023. This project is funded by the FY 2021 barrier system appropriation.

FIGURE 8: MORELOS DAM PROJECT, USBP YUMA SECTOR



- i. On June 30, 2023, DHS announced that it had authorized CBP to move forward with two fence replacement projects in the USBP Yuma and El Centro Sectors. Both projects will replace dilapidated segments of legacy fencing that presently create safety and security concerns. *See CBP Moves Forward on RGV Barrier and Yuma Andrade and El Centro Calexico Fence Replacement Projects to Mitigate Immediate Life, Safety and Operational Risks* at <https://www.cbp.gov/newsroom/local-media-release/cbp-moves-forward-rgv-barrier-and-yuma-andrade-and-el-centro-calexico>. In the Yuma Sector, CBP will replace approximately 0.5 miles of legacy landing mat barrier with bollard barrier. In early 2023, the legacy barrier began to collapse into Mexico. It has since been secured but poses security and safety risks if it is not replaced. In the El Centro Sector, CBP will replace 0.6 miles of dilapidated legacy barrier with new bollard barrier. This will help secure a heavily urbanized area that allows for quick vanishing times for illicit cross-border activity. CBP anticipates that work on both projects will begin in 30-90 days and will take approximately 180 days to complete. Both projects will be funded by the FY 2018 and FY 2020 barrier system appropriations.
- j. In the USBP RGV Sector, CBP has completed a number of projects aimed at life, safety, environmental, and operational requirements. This work included addressing flood control levees that were compromised by prior barrier construction. CBP remediated the compromised levees by constructing 6 to 14-foot concrete or earthen levees, ensuring they were structurally sound and met FEMA certification for flood control, and installed 4 to 6-foot-tall bollard barrier on top as a guardrail to protect pedestrians and vehicles from falling off the levee. The compromised levees posed serious risks, including inadequate flood protection and inadequate access and mobility for first responders, landowners, farmers, and ranchers due to unfinished levee ramps and access

points. This work is now substantially complete. It was funded by the FY 2018 and FY 2019 barrier system appropriations. CBP is also closing gaps in the existing barrier, which create security vulnerabilities, by installing gates. In addition to providing access to agents, the gates also allow landowners and first responders access to both sides of the barrier. CBP expects to complete this project in August 2023. This project is funded by the FY 2018 and 2019 barrier system appropriation. CBP is also doing remediation work in the RGV Sector, which includes completing roads to ensure safe driving surfaces and sight distances; and completing drainage and erosion control measures needed to protect the integrity of constructed infrastructure, relocating or completing access ramps for agents, landowners, and first responders, and installing canal crossings where they are required. Work is on-going. CBP expects to complete this work in August 2023. It is funded by the FY 2018 and FY 2019 barrier system appropriation.

FIGURE 9: COMPLETED CONCRETE LEVEE WITH BOLLARD AND ACCESS RAMP, USBP RGV SECTOR





FIGURE 10: INCOMPLETE GATE, USBP RGV SECTOR



- k. On June 30, 2023, DHS announced that it had authorized CBP to move forward with planning and execution of up to approximately 20 miles of new border barrier system in the RGV Sector. *See CBP Moves Forward on RGV Barrier and Yuma Andrade and El Centro Calexico Fence Replacement Projects to Mitigate Immediate Life, Safety and Operational Risks* at <https://www.cbp.gov/newsroom/local-media-release/cbp-moves-forward-rgv-barrier-and-yuma-andrade-and-el-centro-calexico>. CBP will construct 18-foot high steel bollard panels that will be placed in concrete jersey barriers. The project will also include the installation of system attributes, such as detection technology, lighting, and access roads, as needed. CBP anticipates awarding a construction contract for this project in September 2023. Construction will be funded by the FY 2019 barrier system appropriation.

1. Going forward, CBP expects to award contracts for the installation of system attributes such as lights, cameras, and ground detection sensors, within the RGVS Sector in those locations where physical barrier has already been constructed.

This work will be funded by the FY 2019 barrier system appropriation.

11. As was also outlined in my July 2022 declaration, on July 11, 2022, DHS announced that the Secretary of Homeland Security had approved an amendment to the Plan (the “Amendment”). A copy of the Amendment was attached as Exhibit J to my July 2022 declaration. As set forth in the Amendment, since the release of the Plan, DHS had further assessed how to best use the FY 2018-2021 barrier system appropriations, in accordance with the purposes of those prior year appropriations. Through that continued assessment, DHS found that the remediation and mitigation requirements from past barrier construction are more substantial than anticipated. DHS concluded those needs can, and should, be addressed through the lawful expenditure of DHS funds appropriated to border barrier systems. Additionally, DHS determined that the installation of barrier system attributes, which may include, as appropriate to each location, lighting, cameras, and detection technology, in areas where physical barrier has already been constructed is consistent with the purpose of the FY 2018-2021 appropriations, will enhance the functionality of previously constructed barrier, and can be implemented in a manner that is consistent with the planning criteria and other principles of the Plan.

12. In light of those considerations, the Amendment describes additional actions that DHS may undertake using its FY 2018-2021 appropriations. In particular, the Amendment: (1) makes the fiscal year 2020 barrier system appropriation available for additional environmental remediation and mitigation requirements at the former DoD project sites; and (2) makes funding from the FY 2018-2021 barrier system appropriations available for the installation of system attributes in those areas where CBP or DoD had already constructed physical barriers prior to Proclamation 10142.

13. The Amendment also sets forth policy guidance for the prioritization of the barrier system appropriations going forward. The Amendment states that DHS intends to prioritize the expenditure of FY 2018-2021 appropriations to continue to address the remediation and mitigation

requirements from past barrier construction and to install barrier system attributes in those locations where physical barrier has already been constructed. The Amendment further provides that decisions about future expenditure of FY 2018-2021 appropriations for these purposes will be made on an individualized project-by-project basis.

**STATUS OF THE FISCAL YEAR 2020 AND 2021 BARRIER SYSTEM  
APPROPRIATIONS**

14. The previous declarations I submitted in this litigation explained how CBP intended to spend the appropriated barrier system funds it received in FY 2020 and 2021. This declaration provides updated information about the status of FY 2020 and 2021 barrier system funds and the projects currently being executed with such funding. As set forth in more detail below, CBP has and will continue to use its FY 2020 and 2021 barrier system funds in a manner that is consistent with their statutory purpose and the amended DHS Plan.

15. In FY 2020, Congress appropriated \$1,375,000,000 to CBP for the construction of barrier system along the southwest border. *See* Public Law 116-93, Div. D, Tit. II, § 209(a)(1).

16. This funding remains available for obligation until September 30, 2024.

17. In fiscal year 2021, Congress appropriated \$1,375,000,000 for the construction of barrier system along the southwest border. *See* Public Law 116-260, Div. F, Tit. II, § 210.

18. This funding remains available for obligation until September 30, 2025.

19. As of August 17, 2023, CBP has obligated approximately \$683,000,000 in FY 2020 barrier system funds and approximately \$531,000,000 in FY 2021 barrier system funds. The Yuma Hill, Morelos Dam, and Tijuana River Barrier projects described above are among the projects that have or are being funded in whole or part by the FY 2020 and FY 2021 barrier system funds.

20. Going forward, in light of the policy guidance set forth in the Amendment, CBP has and will continue to prioritize the expenditure of the remaining FY 2020 and FY 2021 barrier system funds: (1) to provide additional funding to remediate and mitigate damage caused by past barrier construction in the former DoD project areas; and (2) to install system attributes in areas where there is existing physical barrier.

21. To date, CBP has awarded six contracts funded by the FY 2020 and FY 2021 barrier system appropriations for remediation work within the areas where DoD previously engaged in barrier construction pursuant to 10 U.S.C. § 284. Generally speaking, the scope of these contracts includes closing gaps in the existing barrier, completing or installing gates, fixing or improving patrol roads, installing drainage and erosion control measures, including repair of existing drainage gates, and addressing other environmental requirements. The remediation work is intended to ensure that the previously-installed border infrastructure functions as it was intended, improve operational conditions for USBP, make the project areas safe, and prevent further environmental degradation in areas impacted by prior border barrier construction.

- a. In June 2022, CBP awarded two contracts for remediation work in the USBP Tucson Sector. The first covers an approximately five-mile segment of the border near Lukeville, Arizona within the former § 284 Tucson 1 and Tucson 2 project areas. Remediation work in this area focused on installing drainage improvements, implementing erosion control measures, including stabilizing slopes, and repair of existing roads to ensure they are safe. The total contract value for this contract is approximately \$17,000,000. Work under this contract is now substantially complete.

FIGURE 11: PATROL ROAD PRIOR TO REPAIR, USBP TUCSON SECTOR





FIGURE 12: SECTOR PATROL ROAD AFTER REPAIR, USBP TUCSON SECTOR



- b. The second contract covers work in multiple segments of the border within the former § 284 Tucson A-1 – A5, Tucson B-1, B-3, and B-5, and Tucson C-1, C-3, and C-4 project areas. To date, work has been conducted in areas near Sasabe, Naco, Nogales, and Douglas, Arizona, to include installing drainage improvements, implementing erosion control measures, and repairing existing roads to ensure they are safe. Work is also being performed east of the Buenos Aires National Wildlife Refuge, where the contractor is working to stabilize and grade slopes and remove large boulders, all of which pose potential safety hazards. The total contract value for this contract is approximately \$167,000,000. Work under this contract is currently ongoing and is approximately 5% complete. The project work is expected to be completed in March 2025.



FIGURE 13: REMEDIATION WORK NEAR BUENOS AIRES  
NATIONAL WILDLIFE REFUGE, USBP TUCSON SECTOR



FIGURE 14: ACCESS ROAD REQUIRING EROSION AND  
DRAINAGE IMPROVEMENT, USBP TUCSON SECTOR





FIGURE 15: PATROL ROAD PRIOR TO REPAIR, USBP TUCSON SECTOR



FIGURE 16: PATROL ROAD AFTER REPAIR, USBP TUCSON SECTOR





- c. CBP has also awarded two contracts for remediation work in the former § 284 project sites in the USBP El Paso Sector. In August 2022, CBP awarded a contract that covers segments of the border near Columbus, New Mexico within the former El Paso 1, B-6, and C-1 project areas. The total contract value for this contract is approximately \$94,000,000. Work under this contract is currently ongoing and is approximately 50% complete. Project work is expected to be complete in February 2024. In September 2022, CBP awarded a contract that covers segments of the border in El Paso County, Texas within the former El Paso D-2, D-3, and A-1 project areas. The total contract value for this contract is approximately \$20,000,000. Work under this contract is currently ongoing and is approximately 50% complete. The project work is expected to be complete in July 2024. To date, the remediation work in these areas has focused on grading roads, installing erosion control measures, completing low water crossings, and grouting and capping bollards.

FIGURE 17: DRAINAGE GATE REPAIR AND IMPROVEMENT, USBP EL PASO SECTOR

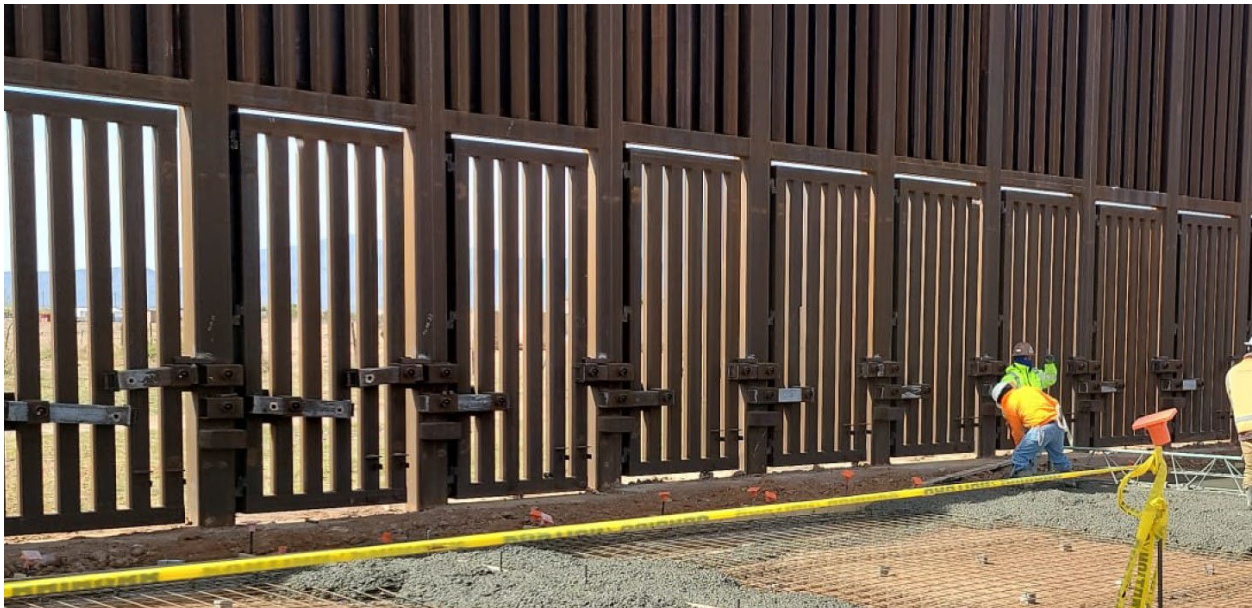


FIGURE 18: PATROL ROAD IMPROVEMENT, USBP EL PASO SECTOR



- d. In September 2022 CBP awarded a contract for remediation work in the former § 284 project areas within the USBP San Diego and El Centro Sectors. To date, work in these areas has focused on repair and improvement of patrol roads, addressing drainage issues, and installation of erosion control measures. The total contract value for this contract is approximately \$73,000,000. Work under this contract is currently ongoing and is approximately 20% complete. The project work and is expected to be complete in November 2023.



FIGURE 19: IMPROVEMENT OF PATROL ROADS & DRAINAGE, USBP SAN DIEGO SECTOR



FIGURE 20: IMPROVEMENT OF PATROL ROADS, USBP SAN DIEGO SECTOR





FIGURE 21: IMPROVEMENT OF PATROL ROADS, USBP EL CENTRO SECTOR



FIGURE 22: ERODED PATROL ROAD, USBP EL CENTRO SECTOR





FIGURE 23: WASHED OUT PATROL ROAD, USBP EL CENTRO SECTOR



FIGURE 24: PATROL ROAD NEEDING IMPROVEMENTS, USBP SAN DIEGO SECTOR



22. CBP had planned to have already awarded additional contracts for remediation and system attributes for the former DoD project sites, but the contract vehicle through which CBP will execute the additional remediation and system attribute projects was the subject of two contract protests actions before the Government Accountability Office (“GAO”). The GAO protests delayed certain contract awards. The protests have now been resolved. To that end, CBP is planning to award additional contracts for remediation and system attribute installation with the remaining FY 2020 and FY 2021 barrier system funding.

23. In July 2023, CBP awarded an additional contract for remediation work and installation of system attributes in the USBP Tucson Sector. The contract covers remediation work and system attribute installation near the San Bernardino National Wildlife Refuge in the former § 284 Tucson 3 project area and near the Coronado National Memorial in the former § 284 Tucson B-6 project area. The total contract value of this contract is \$234,840,000.

24. CBP expects to award another contract for remediation work and system attribute installation in the USBP Tucson Sector in August 2023. This contract will cover work near the Cabeza Prieta National Wildlife Refuge and Organ Pipe Cactus National Monument in the former § 284 Tucson 1 and Tucson 2 project areas. The estimated cost of this contract is approximately \$334,000,000.

25. CBP is also planning for remediation work in the USBP San Diego, Yuma, and El Paso Sectors where DoD previously engaged in barrier construction pursuant to 10 U.S.C. § 2808. CBP is currently engaged in an environmental planning process, including actions consistent with the National Environmental Policy Act, concerning the remediation work that is planned in the former § 2808 project areas. *See* [Border Barrier Remediation – San Diego and Imperial Counties, CA; Yuma County, AZ; Hidalgo and Luna Counties, NM – May 2023](https://www.cbp.gov/about/environmental-management/border-barrier-remediation-san-diego-and-imperial-counties-ca-yuma-county-az-hidalgo-and-luna-counties-nm), at <https://www.cbp.gov/about/environmental-management/border-barrier-remediation-san-diego-and-imperial-counties-ca-yuma-county-az-hidalgo-and-luna-counties-nm>. As soon as the environmental planning process is complete, CBP expects to award three additional contracts covering remediation in the USBP San Diego, Yuma, and El Paso Sectors. The remediation work in the former § 2808 project



areas is expected to be similar to the scope of work in the former § 284 projects areas, to include closing gaps in the existing barrier, completing or installing gates, fixing or improving patrol roads, installing drainage and erosion control measures, and addressing other environmental requirements. As noted, the remediation work is intended to ensure that the previously installed border infrastructure functions as it was intended, improve operational conditions for USBP, make the project areas safe, and prevent further environmental degradation in areas impacted by prior border barrier construction. The estimated contract costs for remediation in the former § 2808 project areas is approximately \$379,000,000.

26. CBP also is planning to utilize up to \$50,000,000 of the FY2020 and 2021 barrier system funds to implement mitigation projects, in coordination with the Department of the Interior and the Department of Agriculture, to offset or mitigate the environmental impacts of border barrier construction in the former DoD project areas. CBP is currently working with the Department of the Interior and Department of Agriculture to identify and plan appropriate mitigation projects, in addition to projects CBP has agreed to undertake as part of settlement agreements to resolve legal claims associated with the DoD barrier construction projects. Mitigation projects may include actions to address impacts to Tribal cultural resources, contributing funding for the acquisition of mitigation property, and studies to assess impacts of barrier construction on threatened or endangered species.

27. In addition to the work described above, and after accounting for other project needs, CBP is planning to use the remaining FY 2020 and FY 2021 barrier system funds to award additional contracts for system attribute installation in the former § 284 and § 2808 project areas. CBP has awarded one contract that includes attribute installation and is planning to award additional contracts before the end of the fiscal year, which is September 30, 2023. *See supra* ¶¶ 23-24. As set forth in my July 2022 declaration, barrier system attributes are a key component of the barrier system and that enhance its effectiveness. System attributes such as lighting, cameras, and detection technology will provide Border Patrol agents with domain awareness, which is critical in both remote and urban areas. Domain awareness also provides agents with the ability to track



and respond to illicit cross-border activity more effectively and minimizes the response times for urgent or emergency situations involving migrants. Additionally, the lighting, cameras, and detection technology that are part of the barrier system will provide awareness when breaching activity, i.e., attempts to cut or otherwise damage or undermine the physical barrier, is detected, which is anticipated to reduce long-term maintenance and repair costs.

### **POTENTIAL HARMS**

28. If CBP is unable to complete the on-going and planned work utilizing the FY 2020 and FY 2021 barrier system appropriations that is described above, it will result in substantial harms to the government.

29. DoD has terminated its barrier construction contracts and completed all of the work it had planned in the former § 284 and § 2808 project areas as part of contract termination. The DoD contractors performed only limited safety work as part of the demobilization process required by their contracts. As set forth above, the former DoD project areas still require a significant amount of remediation work to ensure they are safe and that the border infrastructure that was installed or constructed by DoD functions as it was intended. As the federal agency responsible for border security, and consistent with the DHS Plan (Plan § IV. B.), DHS/CBP is now responsible for the border infrastructure and existing site conditions within the former DoD § 284 and § 2808 project areas. CBP must therefore ensure that the border infrastructure functions as it was intended and that both the border infrastructure and existing site conditions do not pose unnecessary risks to USBP agents who work in these areas or any other individual who may enter these areas.

30. To cite just a few examples, if the remediation requirements go unaddressed CBP will be unable to complete or improve patrol roads. This will limit USBP's ability to access certain portions of the border or require that USBP utilize roads that are not safe for regular travel. Similarly, unfinished drainage improvements will cause existing patrol roads to wash out more frequently, which will increase long-term maintenance and repair costs. Unfinished drainage improvements will also undermine the structural integrity of the existing barriers, as water will erode the foundation of the existing barriers and put them at risk for failure. Additionally, there

are numerous areas within the former DoD project sites that require significant erosion control measures to prevent rockfall and address other hazards that pose an immediate safety risk to USBP agents, the general public, and migrants. To this same end, to the extent CBP is unable to ensure that existing drainage gates work properly, it will increase flooding risks, undermine the structural integrity of the existing barriers, and increase the long-term maintenance and repair costs of the adjacent patrol and maintenance roads.

31. As part of its on-going work across the southwest border, including the remediation work in the § 284 and § 2808 project areas, CBP is also filling gaps and fixing gates in the existing barrier. To date, CBP has closed over 68 gaps in the existing barrier. An additional 50 gap and gate locations are under construction. CBP expects to complete work on these additional 50 locations by the end of fiscal year 2023. There are 11 more gate and gap locations that are anticipated for completion in fiscal year 2024. A court order requiring CBP to suspend or divert funding from this important work would compromise public safety and border security. If not completed, incomplete barrier sections with gaps and inoperable access gates can become funnel points for illicit cross border activity and create security vulnerabilities.

32. As detailed above, system attributes such as lighting, cameras, and detection technology provide Border Patrol agents with domain awareness, which will minimize response times and likely reduce the long-term maintenance and repair costs. Currently, the barrier system construction that was initiated by DoD lacks many of these important attributes. A court order requiring CBP to stop funding implementation of system attributes would adversely impact the effectiveness and longevity of the barrier system.

33. Finally, there would be significant administrative and financial burdens associated with any required change in direction that would be imposed on the agency as part of a preliminary injunction. For example, if CBP were required to suspend or terminate its existing remediation contracts, CBP will be required to pay potentially substantial delay and termination costs to its contractors and lose the benefit of funding that could otherwise be used for priority remediation work and system attribute installation. Similarly, CBP has already invested significant time and

resources into the remediation and system attribute contracts that it intends to award in the coming months, including contract planning, solicitation, and evaluation of existing bids. If CBP were required to abandon its current plans, it would have to invest significant time and resources in planning, solicitation, and evaluation of contract bids for new projects, as well as for environmental planning and stakeholder consultation.

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This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18 day of August, 2023.



Paul Enriquez  
Infrastructure Portfolio Director  
Program Management Office Directorate  
U.S. Border Patrol